

FILED

OCT 04 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

Clerk, U.S. District Court
District Of Montana
Missoula

JOEL MILES WHITE,

Plaintiff,

vs.

SENTENCE REVIEW DIVISION,
HON. RICHARD SIMONTON, HON.
RAY DAYTON, HON. LOREN
TUCKER, and ED SHEEHY,

Defendants.

CV 13-00042-BU-DWM

ORDER

Plaintiff Joel White has filed a Motion to Remove the Strike that was issued when his civil case was dismissed on August 15, 2013. (Doc. 10). A final Order has been issued in this case, therefore, the Court construes the motion as being filed pursuant to Rule 60 of the Federal Rules of Civil Procedure.

Motions for relief from a judgment are addressed to the sound discretion of the district court, *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004), and allow a party to seek reconsideration of a final judgment or any order where such a party can demonstrate: “(1) mistake, inadvertence, surprise, or excusable neglect; . . . [or] (6) any other reason that justifies relief.” Fed.R.Civ.P. 60(b).

Mr. White argues that because of his lack of knowledge of the law the strike

that was issued pursuant to 42 U.S.C. § 1915(g) should be removed. He cites authority for the proposition that pro se filings should be liberally construed.

Mr. White's case was designated as a "strike" under 28 U.S.C. § 1915(g) because his claims were frivolous because they were barred by res judicata (*See Franklin v. Murphy*, 745 F.2d 1221, 1230 (9th Cir. 1984)); by the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994); because his filing was found to be malicious; and because his claims against Mr. Sheehy were frivolous. (June 4, 2013 Findings and Recommendations, Doc. 4 adopted in full Doc. 9). Mr. White has presented no new evidence and has not demonstrated that this Court committed clear error in issuing the strike its ruling. There has been no change in the law, and none of the reasons set forth in Rule 60(b) are applicable. Mr. White gives no justification for reconsidering the issuance of a strike pursuant to 28 U.S.C. § 1915(g) and this Court sees no reason to do so. This case is closed and no further motions for reconsideration will be considered.

IT IS ORDERED:

Mr. White's Motion to Remove Strike (Doc. 11) is DENIED.

DATED this 4th day of October, 2013



Donald W. Molloy, District Judge
United States District Court